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FILED
07/28/2023
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0829-R-2022
Lambert, Kathryn
6.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Wagner Land Development, Inc.

CASE 43B-0829-R-2022
43B 30115924

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Wagner Land Development Inc. claim 43B 30115924 appeared in the Preliminary Decree with the following issue remark: NO PRIORITY DATE WAS CLAIMED. The issue remark was not addressed and resolved through the objection process. The Legislature has directed the

Water Court to resolve the issue remarks using the procedures set forth in section 85-2-248, MCA.

The December 8, 2022 Order Consolidating Case And Setting Scheduling Conference set a scheduling conference by telephone for January 12, 2023 at 3:00 pm Mountain Time. The Court was on the telephone from 2:59 to 3:05 pm. The claimant did not appear.

The January 13, 2023 Court Minutes, Order Entering Default, and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimant and the Bozeman Regional Office, Montana Department of Natural Resources and Conservation ["DNRC"]. On April 25, 2023 and April 28, 2023 DNRC Memoranda were filed. The second DNRC Memorandum states that the claimant never contacted the DNRC as directed in the Order. Nothing was filed by the claimant.

The May 3, 2023 Second Order Entering Default and Order Setting Deadline Pursuant To Section 85-2-248(9)(a), MCA states in full:

The January 13, 2023 Court Minutes, Order Entering Default, and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA ["Order"] set an April 10, 2023 deadline for the claimant to file documentation resolving the issue remark. Nothing was filed.

As Wagner Land Development, Inc. did not comply with the Order, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the SECOND default of Wagner Land Development, Inc. is ENTERED.

On April 25, 2023 the Montana Department of Natural Resources and Conservation ["DNRC"] filed a Memorandum. On April 28, 2023 the DNRC filed an Addendum To April 18th Memorandum. The second Memorandum states that Wagner Land Development, Inc. never contacted the DNRC as directed in the Order. The first Memorandum suggests a possible priority date but it is unknown if there was a water right appropriated on the suggested date.

Exempt Stock Use Statement of Claim 43B 30115924 was filed Jim Wagner on July 24, 2017. Section 85-2-222(1)(b), MCA, states that a person claiming an exempt right "shall submit information required by 85-2-224(1) and (2) on a form provided by the department". Section 85-2-224(1), MCA, lists the information which *must* be included on a statement of claim, including "(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (1)(c)". Statement of Claim 43B 30115924 is blank at Item 13 "**Date of first use:** _____." Section 85-2-224(2), MCA, states that the claimant filing a statement of claim *shall* submit "other evidence in support of the claim." Item 13 on the Statement of Claim

states: “Attach copies of the decree, record of filing, or proof of use right.” No proof of a use right – appropriated ever – is attached to Statement of Claim 43B 30115924. As a result, the following issue remark was added to this claim: NO PRIORITY DATE WAS CLAIMED. Without identification and proof of the water right claimed, it is not possible for the Court to decree some unidentified mystery water right in this adjudication.

The original claimant failed to identify and provide proof of the right claimed. The successor claimant has repeatedly failed to comply with Court Orders issued to address the issue remark so the Court can decree an existing water right. The record is devoid of any indication this is an existing water right. Absent this critical information identifying what existing water right is being claimed, there is nothing for the Court to decree.

Pursuant to 85-2-248(9)(a), MCA, it is

ORDERED that the deadline is **June 5, 2023** for Wagner Land Development, Inc. to show cause in writing why the Court should not proceed with dismissing claim 43B 30115924 as Wagner Land Development, Inc. has failed to identify the existing right attempted to be claimed. If no additional information is filed by June 5, 2023, the Court will conclude that Wagner Land Development, Inc. agrees claim 43B 30115924 should be dismissed because there is no existing water right claimed.

Nothing was filed by the claimant. These documents are viewable in the Court’s FullCourt Enterprise case management system.

APPLICABLE LAW

“All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section.” Section 85-2-248(2), MCA.

Section 85-2-222(2)(b), MCA, states that a person claiming an exempt right “shall submit information required by 85-2-224(1) and (2) on a form provided by the department”.

Section 85-2-224(1), MCA, lists the information which *must* be included on a statement of claim, including “(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (1)(c)”.

Section 85-2-224(2), MCA, states that the claimant filing a statement of claim *shall* submit “other evidence in support of the claim.”

Section 85-2-248(9)(d), MCA, states that if a claimant fails to comply with an order issued by the Montana Water Court in its review of issue remarks, the Court may terminate the claim.

FINDINGS OF FACT

1. The Statement of Claim does not provide the approximate dates of first putting the water to beneficial use – the priority date – or file evidence supporting the right claimed. The right claimed is not identified.
2. The Statement of Claim is not filed in accordance with sections 85-2-222, MCA and 85-2-224, MCA.
3. The claimant failed to comply with the three orders issued by this Court in its review of the issue remark.

CONCLUSIONS OF LAW

1. The Statement of Claim is not filed in accordance with sections 85-2-222, MCA and 85-2-224, MCA.
2. This claim should be terminated. Section 85-2-248(9)(d), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court terminate claim 43B 30115924 to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the claim is terminated in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Wagner Land Development, Inc.
% Jim Wagner
PO Box 580
Bristol, IN 46507

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B**

Water Right Number: **43B 30115924** STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: **DISMISSED**

Owners: WAGNER LAND DEVELOPMENT, INC
 %JIM WAGNER
 PO BOX 580
 BRISTOL, IN 46507 0580

Priority Date:

Type of Historical Right:

Purpose (use): STOCK

Flow Rate:

Volume:

Source Name: TRAIL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.